IP 01-0299-C M/S Young v DaimlerChrysler [2]
Judge Larry J. McKinney Signed on 10/25/04

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MELINDA YOUNG, Plaintiff, vs. DAIMLERCHRYSLER CORPORATION, Defendant.	))))))))	IP 01-0299-C-M/S

ORDER ON PLAINTIFF'S MOTION FOR ATTORNEY FEES & COSTS

This cause is now before the Court on the plaintiff's, Melinda Young ("Young"), Motion for Attorney Fees and Costs in the amount of $168,180.00 in attorney fees and $7,331.19 in costs. Defendant, DaimlerChrysler Corporation, has objected to the amount of attorney fees and to the amount of costs. Specifically, DaimlerChrysler challenges both the hourly rate Young used and the number of hours expended for the litigation to calculate the lodestar amount; it challenges the award of all Young's attorney fees because Young did not prevail on all of her claims; and it challenges certain costs. In total, DaimlerChrsyler seeks a reduction in the attorney fees award to $105,367.50 (including simple interest) and a reduction in the amount of costs to $793.26.

For the foregoing reasons, the Court finds that Young's Motion for Attorney Fees should be **GRANTED in part and DENIED in part**. The Court concludes that Young is entitled to $152,692.50 in attorney fees and $4,417.54 in costs.

I. STANDARD

The prevailing party in an Americans with Disability Act ("ADA") case is entitled to "'an award of fees for all time reasonably expended in pursuit of the ultimate result achieved.'" *Shott v. Rush-Presbyterian-St. Luke's Med. Ctr.*, 338 F.3d 736, 739 (7th Cir. 2003) (quoting *Jaffee v. Redmond*, 142 F.3d 409, 416 (7th Cir. 1998) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983))). *See also* 42 U.S.C. § 12205. The Court starts with the "lodestar" amount, calculated by multiplying the number of hours the attorney reasonably expended on the litigation times a reasonable hourly rate. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Dunning v. Simmons Airlines, Inc.*, 62 F.3d 863, 872 (7th Cir. 1995). This amount may be adjusted up or down depending upon the time and labor required, the novelty and difficulty of the questions, the skill requisite to perform the legal services properly, the preclusion of employment by the attorney due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, time limitations imposed by the client or the circumstances, the amount involved and the results obtained, the experience, reputation, and ability of the attorneys, the "undesirability" of the case, the nature and length of the professional relationship with the client, and awards in similar cases. *See Mathur v. Bd. of Trustees of S. Ill. Univ.*, 317 F.3d 738, 872 n.1 (7th Cir. 2003).

II. DISCUSSION

A. LODESTAR AMOUNT

Young has requested that the Court award her $168,180.00 in attorney fees, which is 560.6 hours at an hourly rate of $300.00, and costs in the amount of $7,331.19. Young's attorney, Richard L. Darst, contends that his client is required by contract to pay $300.00 per hour under his "contingency fee" contract with her. Moreover, Mr. Darst argues that this rate is the same rate that all of his "contingency

fee" clients pay. In addition, Mr. Darst asserts that his current non-contingency hourly rate is $275.00; therefore, if the Court reduces the reasonable rate, it should make that rate $275.00.

DaimlerChrysler contends that the $300.00 hourly rate is excessive for two reasons. First, the regular hourly rate in the contract between Young and Mr. Darst is $225.00. In addition, $225.00 per hour is the regular rate that DaimlerChrysler's attorney's are paid for the same work. In contrast, Young argues that Mr. Darst has more experience than DaimlerChrysler's attorneys and should command a higher rate. In addition, Young asserts that DaimlerChrsyler had two experience attorneys working on their case in addition to at least one associate; therefore, the total hourly rate paid by DaimlerChrysler for its representation is over double the $225.00 hourly rate for each experienced partner alone. Mr. Darst litigated this case on Young's behalf without the benefit of additional attorneys. Furthermore, the contract signed by Young in this case specifically states that the rate she would pay Mr. Darst for his work on her case on a contingent basis was $300.00 per hour, not a percentage of her recovery at trial.

Although the Court recognizes that the contract Young signed with Darst allows him to obtain $300.00 per hour if he wins her case, the Supreme Court in *City of Burlington v. Dague*, 505 U.S. 557 (1992), has counseled against a "contingency-fee enhancement" when calculating a fee award. *Id.* at 566. In addition, this Court has eschewed this approach in other employment discrimination cases. Therefore, the Court disagrees with Mr. Darst that $300.00 per hour is a reasonable fee. However, the Court also disagrees with DaimlerChrysler that because it paid its lead counsel $225.00 per hour, that sets the reasonable amount for Mr. Darst's services. Mr. Darst has presented evidence that his rate was $225.00 per hour when he started this case in 1999, however, he has also presented evidence that his rate increased to $275.00 per hour in 2001. This is not an unreasonable increase given the number of years Mr. Darst

has practiced and his success in employment discrimination cases. Therefore, the Court finds that the lodestar rate should be $225.00 per hour for services performed by Mr. Darst in 1999 and 2000 and $275.00 per hour for services performed in 2001 through trial in 2004. Mr. Darst may receive interest on his fees for any delay in payment after judgment at the statutorily prescribed rate. *See* 28 U.S.C. § 1961.

DaimlerChrysler also challenges the reasonableness of the number of hours Mr. Darst spent on Young's case. First, DaimlerChrysler asserts that hours Mr. Darst spent on Young's case prior to his filing a complaint on her behalf should be excluded because the EEOC represented Young until she intervened. Moreover, DaimlerChrysler argues that Mr. Darst spent an unreasonable amount of time drafting Young's complaint because it so closely mirrors the one the EEOC filed. The Court finds that the time Mr. Darst spent with Young prior to his discussion with her in preparation for filing her complaint to intervene are proper because those charges reflect assessment of Young's case independently from the charges brought against DaimlerChrysler by the EEOC.

The amount of time spent on Young's complaint does seem unreasonable in light of its similarity to the EEOC's original complaint. The charges DaimlerChrysler disputes read:

4/07/01	RLD	Begin draft list of persons involved, list of facts, begin motion to intervene and intervening plaintiff's complaint	4.50 hrs
4/10/01	RLD	Add to Complaint of Intervening Plaintiff and Motion to Intervene, call EEOC attorney, send drafts to EEOC attorney	1.50 hrs
4/10/01	RLD	Call from Prenkert on proposed complaint, change complaint, motion, memorandum, order, call Macey's office	1.50 hrs
4/11/01	RLD	Revise complaint, motion, memorandum and order	1.20 hrs

DaimlerChrysler contends that the entirety of these hours should be deleted because it is impossible to ascertain the amount of time spent on each activity. The Court does not agree with this approach and

would parse out the time spent on the complaint by dividing the number of hours spent by the number of activities in that amount of time. Although not a perfect system, consistently applied it is fair resolution. Making this cut first, Mr. Darst spent approximately 6.2 hours (that includes time spent on a memorandum to intervene, the complaint and related calls and/or work). Given the striking similarity between the EEOC complaint and Young's complaint, the Court finds at least half of this time excessive and will reduce the number of hours expended by Mr. Darst in 2001 by 3.1 hours.

DaimlerChrysler also takes issue with work Mr. Darst performed on Young's behalf that DaimlerChrysler deems "administrative or secretarial in nature" for a total of 13.1 hours in 2001, 2003 and 2004. Young asserts that Darst completed the work at issue himself for two reasons: 1) the work was not administrative in nature but relevant to evidentiary matters that needed attorney scrutiny; and 2) the work was related to trial preparation and could not have been performed by anyone unfamiliar with the facts or the trial strategy of the attorney. The Court agrees with Young that these charges are reasonable in light of Mr. Darst's handling of Young's case without the benefit of co-counsel.

Finally, DaimlerChrysler takes issue with 3.8 hours spent answering questions of the press about this case after trial because it is unrelated. This argument is without merit. The press only made inquiries after the trial on the merits. In addition, the amount of time spent on this matter was not excessive.

In summary, the Court has found that for purposes of calculating the lodestar amount, 1) a reasonable rate in this case is $225.00 per hour for services performed prior to 2001, and $275.00 per hour for services performed thereafter, and 2) the total number of hours spent should be reduced by 3.1 hours to 556.4 hours. Mr. Darst spent 12.4 hours prior to 2001, for a subtotal of $2,790.00, and 545.1 hours in 2001 and after, for a subtotal of $149,902.50, which makes the total lodestar amount

$152,692.50.

B. OTHER CONSIDERATIONS

DaimlerChrysler contends that the lodestar amount should be adjusted downward by at least 10% because Young only succeeded on one of three claims that she brought under the ADA. Specifically, Young prevailed only on her intentional discrimination claim. DaimlerChrysler apparently concedes that Young's failure to accommodate claim was interrelated with the intentional discrimination claim because it only contends that the attorney fees award should be reduced because Young's retaliation claim is unrelated. Young contends that the facts supporting her retaliation claim overlapped those that supported her other two claims. Moreover, the retaliation claim was really an alternative claim with respect to the causal connection of the discrimination by DaimlerChrysler, which must be measured against the verdict in this case, which was well over Young's last demand and well over the statutory maximum. In other words, Young contends that her success on one claim far exceeded DaimlerChrysler's proffer to settle all three; therefore, the measure of her success is high.

The Court agrees with Young that the core of facts in this case supported the multiple claims that she brought and, in effect, allowed the jury to conclude that DaimlerChrysler discriminated in the fashion covered by the most overreaching of her claims, disparate treatment. Moreover, the measure of Young's success is high given the jury's assessment of the harm to Young and its assessment of the reprehensibility of DaimlerChrysler's conduct as reflected in the jury's punitive damage award. Similarly, the Court agreed with the jury in that the evidence at trial supported a finding of a high degree of reprehensibility. Finally, the Court finds that separation of the attorney's work by claims is nearly impossible and impractical

because the factual evidence to support each of the three claims largely overlapped. There is little evidence that Mr. Darst could have spent less time litigating only one of Young's claims in this case.

For these reasons, the Court finds that no reduction in attorney fees because of Young's failure to win on all of her claims is necessary.

C. COSTS

DaimlerChrysler objects to copying charges, phone expenses, and certain witness fees that Young contends are part of her costs. Specifically, with respect to copying charges, DaimlerChrysler objects to all copying charges that are not specific enough to determine whether they were reasonably necessary for use in the case. The total amount by which DaimlerChrysler seeks to reduce the copying charges is $3,011.71. Young asserts that the charges are sufficiently detailed, however, agrees that $313.65 in copies is duplicative and should be deducted from the $1,130.05 amount for charges between December 15, 1999, through January 22, 2003. In addition, the copying charges are buttressed by the specific dates and the type of work performed by the attorney on those specific dates; therefore, Young argues, the charges are detailed enough.

The Court agrees with Young that the copying charges are detailed enough because they are filed contemporaneously with the attorney's record of activity for the case and can easily be correlated. The Court finds the amount of copying expenses reasonable under the circumstances and will deduct the $313.65 in duplicative charges from the total.

DaimlerChrysler also objects to phone expenses and to an invoice from Dr. Kleinman, a prospective witness for Young who never testified at trial. The Court finds that phone expenses that are

incidental and necessary and normally charged to a fee-paying client are recoverable under the ADA's fee-shifting statute. 42 U.S.C. § 12205, which has been interpreted similarly to the fee-shifting statute of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1988. *See, e.g., Tuggles v. Leroy-Somer, Inc.*, 328 F. Supp. 2d 840, 843 (2004). However, the invoice of Dr. Kleinman of $2,500.00, as Young concedes, is not recoverable.

Finally, DaimlerChrsyler contends that Young may not recover her expert witness fees of $900.00, and her witness fee of $100.00 for Mr. Denmark, pursuant to the general costs statute, 28 U.S.C. § 1920, and the witness fee provision, 28 U.S.C. § 1821. Def.'s Br. in Opp'n, at 20 (citing *Lock v. Jenkins*, 634 F. Supp. 615, 619 (N.D. Ind. 1986)). However, the *Lock* court was looking at an award of fees pursuant to the general costs statute, not pursuant to the fee-shifting statute of the ADA. Expert fees have been found to be recoverable under the Title VII fee-shifting corollary to the ADA fee-shifting statute in an ADA case. *See* 42 U.S.C. § 1988(c); *Robins v. Scholastic Book Fairs*, 928 F. Supp. 1027, 1034 (D. Or. 1996), *aff'd in relevant part*. The Court agrees with the provisions that would allow a successful plaintiff to recover expert witness fees as part of the attorney fees or costs; therefore, Young's expert witness fee of $900.00 is allowed.

However, there is nothing in the fee shifting statutes for the ADA or other civil rights statutes that would allow for fees for other witnesses. Moreover, as DaimlerChrysler points out, Young never called Mr. Denmark as a witness. For this reason, the Court denies Young's petition for $100.00 in witness fees for Mr. Denmark.

In summary, the Court finds that Young's petition for costs in the amount of $7,331.19, should be reduced by a total of $2,913.65, making the total costs recoverable $4,417.54.

III. CONCLUSION

For the foregoing reasons, plaintiff's, Melinda K. Young's, Motion for Attorney Fees is **GRANTED in part and DENIED in part**. Plaintiff, Melinda K. Young, is entitled to recover $152,692.50 in attorney fees and $4,417.54 in costs.

IT IS SO ORDERED this ___ day of October, 2004.

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LARRY J. McKINNEY, CHIEF JUDGE
United States District Court
Southern District of Indiana

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